IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 724 of 2005

Between:

M/s. Halcyon Fertilisers Ltd., a Public limtied Company - having its regd. Office at 39-7-56, Murali Nagar, Visakhapatnam 530 007, rep. by its Managing Director, Sri I.V.N. Raju.

..... PETITIONER

AND

1 State Bank of India, a Nationalised Bank, having its Branch at B.H.P.V., B.H.P.V. Post, Visakhapatnam 530 012, rep. by its Asst. General Manager, cum-Branch Manager.
2 Sri N. Radha Krishna C/o. Nandina Hitech Steel Corporation,
Plot No. S-45, D-Block, Auto Nagar, Gajuaka, Visakhapatnam 530 012.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue appropriate writ, order or direction more in the nature of a writ of mandamus declaring the action taken by the 1st respondent in issuing notice dt. 12.08.2004 U/Sec 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the sale of the property Plot No.200/A, D-Block, I.D.A., China Gantyada Vg., Gajuwaka Mandal, Visakhapatnam 530 012, held on 18.1.2005 in pursuance thereof as illegal and opposed to principles of natural justice and also violative of Art 14 of Constitution of India and set aside the same and consequently direct the 1st respondent to redeliver possession of the said property to the Writ Petitioner and pass such other order or orders.

Counsel for the Petitioner : MR. K.S.MALLIKARJUNA RAO

Counsel for the Respondents : MR.E.MADAN MOHAN RAO

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.724 OF 2005

ORDER :

This writ petition is filed seeking a Writ of Mandamus declaring the action of the 1st respondent- State Bank of India in issuing the notice dated 12-08-2004 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') as well as the sale of the mortgaged property held on 18-01-2005 as arbitrary and illegal and for a consequential direction to the 1st respondent to re-deliver the possession of the property in question to the writ petitioner.

It is not in dispute that the petitioner has availed loan from the 1st respondent Bank. It is also not in dispute that the 1st respondent Bank has filed O.A.No.175 of 2004 on the file of the Debt Recovery Tribunal, Visakhapatnam against the writ petitioner for recovery of Rs.23,41,025-48ps with future interest and by order dated 5-8-2004

passed by the Tribunal the writ petitioner was restrained from transferring or alienating or otherwise dealing with the mortgaged property pending proceedings before the Tribunal. While so, the 1st respondent issued notice dated 12-08-2004 under Section 13 (2) of the Act informing the petitioner that its outstanding liabilities is to the tune of Rs.23,41,025-48ps as on 31-7-2004 and calling upon the writ petitioner to discharge the liabilities within 60 days failing which the action as contemplated under sub-Section (4) of Section 13 of the Act will be initiated. Subsequently, the Bank issued the sale notice, dated 14-12-2004 under Section 13 (4) of the Act proposing to conduct the sale of the mortgaged property on 18-01-2005. It is also not in dispute that the sale was held on 18-01-2005 as published in the local dailies and the 2nd respondent herein was declared as the successful bidder. This writ petition was filed on 24-01-2005 questioning the notice dated 12-08-2004 issued by the 1st respondent under Section 13 (2) of the Act as well as sale held on 18-01-2005 contending inter alia that the 1st respondent is not entitled to initiate proceedings simultaneously under the Act while the recovery proceedings before the Debt Recovery Tribunal are pending. It is also alleged that there was no wide publicity of the sale proclamation dated 14-12-2004 and that the 1st respondent has failed to furnish the material particulars of the property in the sale proclamation. Hence, according to the petitioner, the sale conducted on 18-01-2005 is vitiated and liable to be set aside.

On behalf of the 1st respondent, a detailed counter-affidavit has been filed denying the allegation that there was no proper publicity of the proclamation. It is stated that the sale proclamation was published in Eenadu and Hindu local dailies dated 16-12-2004 fixing the date of sale of the property as 18-01-2005. It is also stated that the properties were valued by the Valuation Engineer at Rs.31,59,000/- and the reserve price was also approved by the Zonal Credit Committee of the 1st respondent Bank at SBI Zonal Office, Visakhapatnam and accordingly the tenders were called for. The bids were received from two persons and among them the 2nd respondent, who was the highest bidder, was declared as the successful bidder. Accordingly, the bid offered by him for a sum of Rs.36,03,489/- was accepted, out of which 1/4th amount was paid by him on 18-01-2005 and the balance was also paid on 27-01-2005. Consequently, the sale certificate was issued on 28-01-2005. It is also stated that

the sale was conducted strictly in accordance with the procedure prescribed under Rule-9 of the Security Interest (Enforcement) Rules, 2002 which provides that the sale shall be confirmed on the date of sale itself taking into consideration the highest bid and it shall be subject to confirmation by the secured creditor. Since the entire bid amount was paid and the sale certificate was also issued, the writ petition filed long after the sale was conducted is misconceived and liable to be dismissed in limine.

I have heard the learned Counsel for both the parties and perused the material on record.

Admittedly, the sale was already conducted on 18-1-2005. The 2nd respondent was the highest bidder and was paid the entire bid amount and the sale certificate was also issued on 28-1-2005. The only objection raised by the petitioner is that there was no wide publicity of the sale proclamation. It is also alleged that the 1st respondent failed to furnish the material particulars of the mortgaged property. However, both the said objections were denied by the respondent and it is categorically stated that the sale notice was published in two local dailies furnishing all the relevant particulars as required under Rule-9 of the Rules. Nothing has been placed before this Court by the petitioner to contradict the stand taken by the 1st respondent. Hence, I do not see any justifiable reason to grant the relief as prayed for.

The further contention of the petitioner that the 1st respondent is not entitled to launch parallel proceedings before the Debt Recovery Tribunal as well as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is untenable. A reading of Section 35 of the Act makes it very clear that the provisions of the Act are in addition to and not in derogation of any other law including the Recovery of Debts due to Bank and Financial Institutions Act, 1993. Therefore, the contention of the petitioner is untenable and the first respondent is entitled to proceed under both the Enactments simultaneously.

The learned Counsel for the petitioner relied upon the decision of the Supreme Court in AWADH BIHARI YADAV v. STATE OF BIHAR in support of his contention that it is not permissible to pursue the parallel remedies in respect of the single cause of action. In the light of Section 35 of the Act which is unambiguous and clearly states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, I am of the view that the ratio laid down in the above case does not apply to the case on hand.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

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10th June, 2005.

gbs

To

1 The Assistant General Manager-cum-Branch Manager, State Bank of India, a Nationalised Bank, having its Branch at B.H.P.V., B.H.P.V. Post, Visakhapatnam 530 012.

2. Two CD copies.